

quently reduced to writing, and will be as binding as if reduced to writing at the time it was made. But the question here presented is, whether an answer in chancery, confessing a parol agreement charged in the bill, is equally binding, as if the agreement itself had been reduced to writing, and is a complete compliance with the statute of frauds? It appears to me, to be obvious, if this be so, that a defendant who makes such a confession in his answer would not be permitted to avail himself of the statute, as a defence to the bill. How could he be suffered to plead the statute of frauds, upon the ground, that the contract was not in writing, when by his answer, he had reduced it to writing, or so evidenced it by writing under his signature, as to amount to a full compliance with the statute? And yet nothing can be clearer, at this day, however the earlier cases may conflict upon the subject, than that a defendant, who by his answer, confesses the parol agreement charged in the bill, may successfully rely upon the statute as a defence.

I cannot avoid, therefore, entertaining a doubt, whether the statement of Judge Story, with reference to the effect of an answer admitting the parol agreement set forth in the bill, would be sustained; and am of opinion that when the defendant confesses the agreement in his answer and does not insist upon the statute, he will be deemed to have waived it, and upon that ground, and upon that ground only, is relief granted.

I cannot bring myself to think, that the answer will be viewed as supplying the requisitions of the statute, when, notwithstanding the answer, the defendant may avail himself of the statute to defeat the contract. If the statute has been fully complied with, how could it be interposed to protect the defendant. He might, with the same propriety, plead the statute against an agreement actually reduced to writing at the time it was entered into.

There is no reason at all to doubt that Jones was indebted to Mrs. Albert, in a large sum of money, and that the debt originated in the misapplication by him of trust funds in his hands, belonging to her; nor do I think, if he had secured this indebtedness, by a valid agreement or conveyance of his proper-